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PTOL-90A (Rev. 04/07)

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/627,858
Filing Date: July 25, 2003
Appellant(s): DIXON ET AL.

MAILED

JUN 2 5 2007

Technology Center 2100

Charles S. Fish
Reg. No. 35,870
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 February 2007 appealing from the Office action mailed 6 September 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0230862	Merchant et al.	5-2003
5,812,748	Ohran et al.	9-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 9, 11-14, 16-19, and 22-24 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Merchant et al., United States Patent Application Publication number

2004/0230862, filed May 16, 2003.

As per claim 1, Merchant discloses a method for providing redundant data load sharing in

a distributed network, comprising: receiving an original data entry (Merchant, ¶0113, where the

data stores are the data entries being stored); storing the original data entry in a first one of a

plurality of nodes (Merchant, ¶0118, where the entries are replicated across multiple nodes);

generating a replicated data entry from the original data entry; storing the replicated data entry in

a second one of the plurality of nodes (Merchant, ¶118-119, where a plurality of replicas are

generated for the plurality of nodes); identifying a failure of either of the first one or the second

one of the plurality of nodes (Merchant, ¶0132, where faulty nodes can be identified); generating

a re-replicated data entry for storage at a third one of the plurality of nodes in response to the

failure in the first or second one of the plurality of nodes (Merchant ¶0132-¶0137, where the

removal of a faulty node will result in the replication of all data entries that were stored thereon

to another node in the system to maintain the correct number of replicas). Merchant fails to

explicitly disclose the re-replicated data entry being generated from a non-failed node.

It would have been obvious to one skilled in the art at the time of the invention that the

invention that Merchant would have generated re-replicated data from the non-failed first or

second one of the plurality of nodes to provide to the third of the plurality of nodes.

This would have been obvious because Merchant discloses re-replicating the data to nodes in the event of node failure (Merchant ¶132-¶137). It would have been obvious that the source of this replication would have been from a non-faulty node in the group because the node being removed from service may have a fault (Merchant, ¶132), and as such, the data contained within that node may be erroneous. Thus modifying the invention of Merchant to only replicate data from non-faulty nodes would provide the obvious benefit of avoiding the replication of erroneous data from a faulted node.

As per claim 2, Merchant further discloses the method of claim 1, further comprising: determining whether there is sufficient capacity in the distributed network to handle data entry replication in response to the failure of the first or second one of the plurality of nodes (Merchant, ¶0133-¶0134, where capacity requirements are checked).

As per claim 3, Merchant further discloses the method of claim 2, further comprising: preventing replication of the original or replicated data entry at the third one of the plurality of nodes in response to insufficient capacity in the distributed network (Merchant, ¶0134, where replication is held off when no satisfactory node is detected).

As per claim 9, Merchant further discloses the method of claim 1, further comprising: establishing a capacity for the distributed network, the capacity representing an amount of data to be stored in the distributed network (Merchant, ¶0116-¶0118, where the nodes that meet the requirements for the redundancy network); establishing a minimum number of the plurality of

nodes required to provide redundancy in the distributed network (Merchant, ¶0118, where M

represents the minimum number of nodes required for redundancy).

As per claim 11, Merchant discloses a system for providing redundant data load sharing

in a distributed network, comprising: a plurality of nodes (Merchant, ¶0116), a first one of the

plurality of nodes operable to receive and store an original data entry (Merchant, ¶0118),

providing a replicate data entry to a second one of the plurality of nodes (Merchant, ¶0123-

¶0131, where the loading of each node involves the providing of data between nodes); determine

a failure of the second one of the plurality of nodes (Merchant, ¶0132-¶0137, where a faulty

node is detected by all nodes in the determination of capacity for handling the failure); providing

a re-replicated data entry to a third one of the plurality of nodes in response to failure of the

second one of the plurality of nodes (Merchant, ¶0134-0137, where the information is replicated

to an additional node). All these actions can be performed by the first node on the system, since

each storage node can operate the methods as part of a distributed application (Merchant, ¶0112),

however Merchant doesn't explicitly provide for the re-replicated data being provided form the

non-faulty node.

It would have been obvious to one skilled in the art at the time of the invention that the

invention that Merchant would have generated re-replicated data from the non-failed first one of

the plurality of nodes to provide to the third of the plurality of nodes.

This would have been obvious because Merchant discloses re-replicating the data to

nodes in the event of node failure (Merchant ¶132-¶137). It would have been obvious that the

source of this replication would have been from a non-faulty node in the group because the node

being removed from service may have a fault (Merchant, ¶132), and as such, the data contained

within that node may be erroneous. Thus modifying the invention of Merchant to only replicate

data from non-faulty nodes would provide the obvious benefit of avoiding the replication of

erroneous data from a faulted node.

As per claim 12, Merchant further discloses the system of claim 11, wherein each node

includes a distributed control function operable to control storage and replication of the original

data entry (Merchant, ¶0112).

As per claim 13, Merchant further discloses the system of claim 11, wherein the first one

of the plurality of nodes is operable to determine whether there is sufficient capacity in the

distributed network to handle data entry replication in response to the failure of the second one of

the plurality of nodes (Merchant, ¶0133-¶0134, where the capacity is checked).

As per claim 14, Merchant and Ohran further disclose the system of claim 13, wherein

the first one of the plurality of nodes is operable to prevent replication of the original data entry

at the third one of the plurality of nodes in response to insufficient capacity in the distributed

network (Merchant, ¶0134, where replication is prevented when no node of sufficient capacity

exists).

As per claim 16, Merchant further discloses the system of claim 11, wherein the capacity

of each of the plurality of nodes is adjusted in response to an addition of a new node or failure of

an existing node (Merchant, ¶0124-¶0131).

As per claims 17-19, these claims are merely a system for executing the methods of claims 1-3 rejected above. Merchant discloses a system, see figure 1, and as such the rejections of claims 1-3 are applicable to claims 17-19 as well.

As per claims 22-24, these claims are merely a computer program for executing the methods of claims 1-3 rejected above. Merchant discloses the use of a computer program, see ¶0112, and as such the rejections of claims 1-3 are applicable to claims 22-24 as well.

Claims 4-8, 10, 15, 20, 21, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merchant in view of Ohran et al., United States Patent number 5,812,748, published September 22, 1998.

As per claim 4, Merchant discloses the method of claim 3, including the use of a distributed network, but fails to disclose the additional limitation of adjusting the capacity of the distributed network in response to the failure, in order to store new data entries without replication.

Ohran discloses adjusting the capacity of a network in response to the failure of a first or second node in order to store new data entries without replication (Ohran, col. 7, lines 44-55).

It would have been obvious to one skilled in the art at the time of the invention to include the capacity adjustment of Ohran in the invention of Merchant.

This would have been obvious because Merchant discloses a means for dealing with capacity shortage by reducing the size of the data to be replicated (Merchant, ¶0134). While this

method is effective in allowing the required degree of replication when small amounts of space

are available on each storage node, it fails to include support for a condition in which no space is

available for the replication. Ohran provides a system that allows for adjusting the replication

capacity attributes to provide a system in which data storage continues even if the minimum

numbers of replica storage nodes are not available (Ohran, col. 7, lines 37-65, where replication

is suspended when the storage for replication does not exist). The system of Ohran provides the

system of Merchant with the obvious benefit of allowing continued, successful operation even

when a less than the minimum numbers of replica storage nodes exist.

As per claim 5, Merchant discloses the method of claim 3 involving the replication of

data entries in a distributed network (Merchant, ¶0118). Merchant fails to disclose identifying a

recovery of the failed first or second one of the plurality of nodes and performing storage and

replication of subsequent data in response to this recovery.

Ohran discloses the recovery of the failed first or second one of a plurality of storage

nodes and performing storage and replication of subsequently received data entries in response to

this recovery (Ohran, col. 7, line 62, through col. 8, line 22, where the connection of the failing

storage system to the non-failing server represents the recovery of the failed first or second

storage node that is then allowed to begin mirroring again, which allows the replication of

subsequently received data entries).

It would have been obvious to one skilled in the art at the time of the invention to include

the capacity adjustment and subsequent recovery of Ohran in the invention of Merchant.

This would have been obvious because Merchant discloses a means for dealing with capacity shortage by reducing the size of the data to be replicated (Merchant, ¶0134). While this method is effective in allowing the required degree of replication when small amounts of space are available on each storage node, it fails to include support for a condition in which no space is available for the replication. Ohran provides a system that allows for adjusting the replication capacity attributes to provide a system in which data storage continues even if the minimum number of replica storage nodes are not available (Ohran, col. 7, lines 37-65, where replication is suspended when the storage for replication does not exist) and restoring replication following any recovery (Ohran, col. 7, line 62 through col. 8, line 22). The system of Ohran provides the system of Merchant with the obvious benefit of allowing continued, successful operation even when a less than the minimum number of replica storage nodes exist and allows for restoration to the desired replication following a recovery.

As per claim 6, Merchant and Ohran disclose the method of claim 5, further comprising: adjusting the capacity of the distributed network in response to the recovery of the failed first or second one of the plurality of nodes (Ohran, col. 7, line 8, lines 7-22, where the failed first or second node is shown in recovery, and Merchant, ¶0124-¶0125, where the addition of any storage device causes capacity adjustments).

As per claim 7, Merchant and Ohran disclose the method of claim 6, further comprising: performing replication of those data entries previously stored but not replicated as a result of the failure of the first or second one of the plurality of nodes (Ohran, col. 8, lines 13-17).

As per claim 8, Merchant discloses the method of claim 1 involving the replication of data entries in a distributed network (Merchant, ¶0118). Merchant fails to disclose identifying a recovery of the failed first or second one of the plurality of nodes and including the recovered failed first or second one of the nodes in the storage and replication of subsequent data in response to this recovery.

Ohran discloses the recovery of the failed first or second one of a plurality of storage nodes and including this node in the storage and replication of subsequently received data entries in response to this recovery (Ohran, col. 7, line 62, through col. 8, line 22, where the connection of the failing storage system to the non-failing server represents the recovery of the failed first or second storage node that is then allowed to begin mirroring again, which allows the replication of subsequently received data entries).

It would have been obvious to one skilled in the art at the time of the invention to include the capacity adjustment and subsequent recovery of Ohran in the invention of Merchant.

This would have been obvious because Merchant discloses a means for dealing with capacity shortage by reducing the size of the data to be replicated (Merchant, ¶0134). While this method is effective in allowing the required degree of replication when small amounts of space are available on each storage node, it fails to include support for a condition in which no space is available for the replication. Ohran provides a system that allows for adjusting the replication capacity attributes to provide a system in which data storage continues even if the minimum number of replica storage nodes are not available (Ohran, col. 7, lines 37-65, where replication is suspended when the storage for replication does not exist) and restoring replication following any recovery (Ohran, col. 7, line 62 through col. 8, line 22). The system of Ohran provides the

system of Merchant with the obvious benefit of allowing continued, successful operation even

when a less than the minimum number of replica storage nodes exist and allows for restoration to

the desired replication following a recovery.

As per claim 10, Merchant discloses the method of claim 9, including the establishment

of a minimum number of nodes, but fails to disclose the additional limitation of maintaining at

least one occurrence of all data entries should the number of nodes fall to one less then this

minimum number.

Ohran discloses storing at least one occurrence of all data entries when the number of

storage nodes is one less than the minimum for replication (Ohran, col. 7, lines 44-55).

It would have been obvious to one skilled in the art at the time of the invention to include

the storage of at least one occurrence of Ohran in the invention of Merchant.

This would have been obvious because Merchant discloses a means for dealing with

capacity shortage by reducing the size of the data to be replicated (Merchant, ¶0134). While this

method is effective in allowing the required degree of replication when small amounts of space

are available on each storage node, it fails to include support for a condition in which no space is

available for the replication. Ohran provides a system that allows for adjusting the replication

capacity attributes to provide a system in which data storage continues even if the minimum

numbers of replica storage nodes are not available (Ohran, col. 7, lines 37-65, where replication

is suspended when the storage for replication does not exist). The system of Ohran provides the

system of Merchant with the obvious benefit of allowing continued, successful operation even

when a less than the minimum numbers of replica storage nodes exist.

As per claim 15, Merchant discloses the method of claim 14, including the use of a

distributed network, but fails to disclose the additional limitation of adjusting the capacity of the

distributed network in response to the failure, in order to store new data entries without

replication.

Ohran discloses adjusting the capacity of a network in response to the failure of a node in

order to store new data entries without replication (Ohran, col. 7, lines 44-55).

It would have been obvious to one skilled in the art at the time of the invention to include

the capacity adjustment of Ohran in the invention of Merchant.

This would have been obvious because Merchant discloses a means for dealing with

capacity shortage by reducing the size of the data to be replicated (Merchant, ¶0134). While this

method is effective in allowing the required degree of replication when small amounts of space

are available on each storage node, it fails to include support for a condition in which no space is

available for the replication. Ohran provides a system that allows for adjusting the replication

capacity attributes to provide a system in which data storage continues even if the minimum

numbers of replica storage nodes are not available (Ohran, col. 7, lines 37-65, where replication

is suspended when the storage for replication does not exist). The system of Ohran provides the

system of Merchant with the obvious benefit of allowing continued, successful operation even

when a less than the minimum numbers of replica storage nodes exist.

As per claims 20 and 21, these claims are merely a system for executing the methods of claims 4 and 5 rejected above. Merchant and Ohran disclose a system, see figure 1 of Merchant, and as such the rejections of claims 4 and 5 are applicable to claims 20 and 21 as well.

As per claims 25 and 26, these claims are merely a computer program for executing the methods of claims 4 and 5 rejected above. Merchant and Ohran disclose the use of a computer program, see ¶0112 of Merchant, and as such the rejections of claims 4 and 5 are applicable to claims 25 and 26 as well.

(10) Response to Argument

For purposes of clarity, applicant's arguments will be presented in italics, and the examiners response will follow for each addressed point.

Claims 1-3, 9, 11-14, 16-19, and 22-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Published Application No. 2004/0230862, issued to Merchant, et al. ...The Examiner has not established that any criteria for a prima facie case of obviousness has been met in this instance.

First, there is no suggestion or motivation in the Merchant, et al. to modify it as proposed by the Examiner. The Examiner has not cited any language within the Merchant, et al. application that would suggest any capability for it to be modified as proposed. The Examiner states that one of ordinary skill in the art would be motivated to provide the feature of the claimed invention, presumably taught by the Merchant, et al. application. The rationale provided by the Examiner for this modification is purely

subjective conjecture and speculation with no objective reasoning being provided to

support modifying the Merchant, et al. application as has been proposed. The Examiner

has merely provided baseless and subjective conclusory "it would have been obvious to

combine" statements using improper hindsight reconstruction without any support for

such conclusory statements from anywhere in the Merchant, et al. application. A

statement that modifications of the prior art to meet the claimed invention would have

been well within the ordinary skill of the art at the time the claimed invention was made

because the reference relied upon to teach that all aspects of the claimed invention were

individually known in the art is not sufficient to establish a prima facie case of

obviousness without some objective reason to modify the teachings of the references. See

M.P.E.P. 2143.01. Since the Examiner has not provided any proper reasoning, let alone

objective reasoning, the burden to establish the first criteria of a prima facie case of

obviousness has not been met.

The examiner respectfully disagrees that the obviousness rejection of claims 1-3, 9, 11-

14, 16-19, and 22-24 is improper. With respect to the argument that no suggestion or motivation

is provided for the modifications from within the Merchant et al. application, the examiner

respectfully disagrees.

These claims are rejected under obviousness utilizing official notice to disclose the

obvious improvement of generating re-replicated data from the non-failed node in the system.

The motivation for doing so comes from the Merchant reference directly.

Merchant discloses the need to maintain the proper number of nodes, and re-replicating the data when one is removed, as is shown in ¶132-137, where the node is removed, possibly due to failure, ¶132, a new node needs be identified and brought into the group, ¶135, and where the data is re-replicated to satisfy the replication requirements of the node groups, ¶118. Official notice was taken that this data replica would come from a non-faulty node. One of ordinary skill in the art would have realized that this feature is obvious. The Merchant provides the base motivation in that the removed node could be failing, having developed a fault ¶132, and one of ordinary skill in the art would realize that the replicating data from a potentially faulty node could have a negative impact on the redundant storage reliability on which the Merchant invention is based, ¶2, by providing potentially erroneous data for the replication. Since this data replication is necessary for successful operation of the invention of Merchant, the examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to have generated this replicated data from one of the non-failed nodes based upon the clear motivation derived from a basic analysis of the desires and motivations of the Merchant disclosure.

> *Second, a reasonable expectation of success has not been shown by the Examiner.*
> *There has also been no showing that the modified reference would even be able to*
> *perform the functionality of the claimed invention. The Examiner, without the improper*
> *hindsight look through the claimed invention, has not addressed how the proposed*
> *modification of the Merchant, et al. application would have any success whatsoever let*
> *alone a reasonable expectation of success. Therefore, Applicant respectfully submits that*

the Examiner has failed to establish the second criteria for a prima facie case of

obviousness.

The examiner respectfully disagrees and believes that a reasonable expectation of success does exist. The Merchant reference discloses a replicated node group that exists to ensure a reliable data source exists, and the obvious modification of the rejection would only serve to aid the invention in this endeavor. This would have been obvious to one of ordinary skill at the time of the invention and does not rely upon improper hindsight.

Third, the Examiner has not shown that the proposed Merchant, et al. application

teaches or suggests all of the claim limitations. For example, Independent Claims 1, 11,

17, and 22 recite in general an ability to generate a re-replicated data entry in a non-

failed first or second one of a plurality of nodes for storage at a third one of the plurality

of nodes in response to a failure in the first or second one of the plurality of nodes. By

contrast, the portions of the Merchant, et al. application cited by the Examiner

specifically discuss removal of data from a faulty node. Thus, the Merchant,

et al. application does not disclose re-replication of a data entry from a non-failed node

for storage in a third node in response to identification of a failed node as provided in the

claimed invention. The Examiner readily admits that the Merchant, et al. application fails

to disclose this feature. The Examiner attempts to justify the rejection of the claims as

being obvious over the Merchant, et al. application. However, the portions of the

Merchant, et al. application cited by the Examiner are concerned with merely relocating

data from a node that is being selected for removal and not to data replication for

redundant sharing as provided in the claimed invention. Thus, the Merchant, et al.

application is still directed to removing data only from a non-working node.

The examiner respectfully disagrees that the proper obviousness rejection fails to disclose

all the claimed limitations. Applicant argues that the data to maintain the redundancy group

must only be provided by relocation from a node selected for removal, however this is not a

requirement of the Merchant disclosure. Merchant, in ¶135, only discloses that the group is

moved to the node identified to replace the node being removed, the group is defined as the

collection of data that is copied onto a number of nodes, ¶116-¶118. Since Merchant defines

multiple copies of each group exist, the examiner believes that the copy provided to the incoming

node could come from any of these nodes. In view of this, official notice was taken that the copy

would obviously come from a non-faulty node, based upon the disclosure that the node being

removed may contain a fault, ¶132. The examiner believes that this proper combination of

Merchant and knowledge common to one of ordinary skill in the art discloses all the limitations

of these claims.

Second, there is no disclosure in the Merchant, et al. application that suggests the

re-replication of data from a first non-failed node for storage in a third node that occurs

as a result of a failure in a second node as required in the claimed invention.

Thus, the Examiner has failed to establish the third criteria for a prima facie case of

obviousness. As a result of the improper modification of the reference, the lack of any

expectation of success for the modification, and the lack of disclosure in the cited

reference by the Examiner, there is an insufficient basis to support the rejection of the

claims.

With respect to the argument that the re-replication is not a result of a failure of a second

node, the examiner respectfully disagrees. In the proper combination utilized in the obviousness

rejection the entire reason that the re-replication is occurring is because a node is being removed

from the system, see Merchant ¶133. Merchant further discloses that this node removal may be a

result of the development of a fault, ¶132, thus causing the re-replication to occur as a result of a

node failure.

Claims 4-8, i0, 15, 20, 21, 25, and 26 stand rejected under 35 U.S.C. ~103(a) as

being unpatentable over U.S. Published Application No. 2004/0230862 issued to

Merchant, et al. in view of U.S. Patent No. 5,812,748 issued to Ohran, et al. .... The

Examiner has not established that any criteria for a prima facie case of obviousness has

been met in this instance.

First, there is no suggestion or motivation to combine Merchant, et al. application

and the Ohran, et al. patent as proposed by the Examiner. The Examiner has not cited

any language within the Merchant, et al. application or the Ohran, et al. patent that

would suggest any capability for them to be combined as proposed. The Examiner states

that one of ordinary skill in the art would be motivated to provide the feature of the

claimed invention, presumably taught by the Merchant, et al. application and the Ohran,

et al. patent. The rationale provided by the Examiner for this combination is purely

subjective conjecture and speculation with no objective reasoning being provided to

support combining the Merchant, et al. application with the Ohran, et al. patent as has

been proposed. The Examiner has merely provided baseless and subjective conclusory "it

would have been obvious to combine" statements using improper hindsight

reconstruction without any support for such conclusory statements from anywhere in the

Merchant, et al. application or the Ohran, et al. patent. A statement that modifications of

the prior art to meet the claimed invention would have been well within the ordinary skill

of the art at the time the claimed invention was made because the references relied upon

to teach that all aspects of the claimed invention were individually known in the art is not

sufficient to establish a prima facie case of obviousness without some objective reason to

combine the teachings of the references. See M.P.E.P. 2143.01. Since the Examiner has

not provided any proper reasoning, let alone objective reasoning, the burden to establish

the first criteria of a prima facie case of obviousness has not been met.

The examiner respectfully disagrees that no motivation for the combination of Merchant

with Ohran is provided. Both Merchant and Ohran are concerned with ensuring fault tolerance

through data replication (Merchant, ¶2 and Ohran, col. 1, lines 15-19). The device of Ohran

provides a method of continuing operation of the system, even if the proper resources do not

exist to provide full replicated operation (Ohran, col. 7, lines 44-55). Since the purpose of a fault

tolerant system is to provide continued access to the data, it would have been obvious to one of

ordinary skill in the art that the reconfiguration of Ohran is a valid way to maintain data

availability during an event in which the resources are stressed. The invention of Merchant always assumes that some space will be available for replicating groups as necessary. One of ordinary skill in the art would have been aware that resources are not infinite and that the invention of Merchant could benefit from the teachings of Ohran on a method for maintaining the desired availability when resources become unavailable. Thus to further the reliability goals of Merchant one or ordinary skill would have been motivated to include the reconfiguration teachings of Ohran as an improving feature for the invention of Merchant.

Second, a reasonable expectation of success has not been shown by the Examiner. There has also been no showing that the proposed combination of the Merchant, et al. application with the Ohran, et al. patent would even be able to perform the functionality of the claimed invention. The Examiner, without the improper hindsight look through the claimed invention, has not addressed how the proposed combination of the Merchant, et al. application with the Ohran, et al. patent would have any success whatsoever let alone a reasonable expectation of success. Therefore, Applicant respectfully submits that the Examiner has failed to establish the second criteria for a prima facie case of obviousness.

The examiner respectfully disagrees that there is no reasonable expectation of success. Both disclosures teach of successful fault-tolerant data replicating systems. There is no clear aspect of either that would prohibit a successful combination of the capacity adjustment of Ohran in the replication system of Merchant.

Third, the Examiner has not shown that the proposed Merchant, et al. - Ohran, et

al. combination teaches or suggests all of the claim limitations. Independent Claim 1,

from which Claims 4-8, and 10 depend; Independent Claim 11, from which Claim 15

depends; Independent Claim 17, from which Claims 20 and 21 depend; and Independent

Claim 22, from which Claims 25 and 26 depend have been shown to be patentably

distinct from Merchant, et al.. Further, the Ohran, et al. patent does not disclose any

additional material combinable with the Merchant, et al. patent that would be material to

patentability of these claims.

The examiner respectfully disagrees that Merchant fails to disclose all the claim

limitations of the independent claims for the reasons mentioned above in the arguments relating

to those claims.

In addition, just like the Merchant, et al. application, the Ohran, et al. patent fails

to provide any capability to re-replicate data entries as required by the claimed

invention. Therefore, Applicant respectfully submits that Claims 4-8, 10, 15, 20, 21, 25,

and 26 are patentably distinct from the proposed Merchant, et al. Ohran, et al.

combination. Thus, the Examiner has failed to establish the third criteria for a prima

facie case of obviousness. As a result of the improper modification of the reference, the

lack of any expectation of success for the modification, and the lack of disclosure in the

cited reference by the Examiner, there is an insufficient basis to support the rejection of

the claims.

The examiner respectfully disagrees that the re-replication fails to be taught. The

examiner believes that the proper 35 U.S.C. 103 rejection applied with respect to these claims

shows that Merchant discloses these limitation, as is shown in the arguments above, relating to

the independent claim rejections.

In view of the above arguments, the examiner feels that the obviousness rejections

applied to claims 1-26 are correct and appropriate.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joshua Lohn

Conferees:

Scott Baderman, Robert Beausoliel

SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER